

REMARKS

Claims 1-10 are pending. Claims 9 and 10 are allowable subject to being rewritten in independent form.

Claims 1-8 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Cheng et al.

This rejection is respectfully traversed for the following reasons.

Recent Examination Guidelines for Determining Obviousness and decisions of the USPTO Board of Appeal and Interferences in *Ex parte Smith*, Appeal 2007-1925 (June 25, 2007) and *Ex parte Catan*, Appeal 2007-0820 (July 3, 2007) that follow the Supreme Court's decision in *KSP Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 17127 (2007) put forth an obviousness analysis that emphasizes a functional approach based on *Graham v. John Deere* factors. As stated in *Graham v. John Deere Co.* 383 U.S. 1, 13, 148 U.S.P.Q. 459, 465 (1966), obviousness under 35 U.S.C. §103 must be determined by (1) analyzing the scope and content of the prior art; (2) ascertaining the differences between the prior art and the claims in issue; (3) resolving the level of ordinary skill in the pertinent art, and (4) analyzing secondary considerations.

As demonstrated below, the Examiner has failed to ascertain differences between the prior art and the claims in issue.

In particular, the apparatus independent claim 5 recites a transceiver for providing data communications over residential twisted pair wiring, comprising:

- an output driver having an output for supplying a transmit signal of a prescribed level to the residential twisted pair wiring, and
- an output drive control system for comparing a DC level set at the output of the output driver with a predetermined threshold signal to control the output driver so as to maintain the transmit signal at the prescribed level.

The Examiner considers control circuit 113 (FIG. 1B) or control logic 201 (FIG. 2) of Cheng to correspond to the claimed output drive control system.

However, the Cheng controllers do not compare a DC level set at the output of the output driver with a predetermined threshold signal to control the output driver so as to maintain the transmit signal at the prescribed level.

The Examiner has failed to point out wherein Cheng discloses this feature.

Further, claim 1 recites a method of configuring a transceiver having an output driver for driving an output terminal to provide data transmission via residential twisted pair wiring, the method comprising the steps of:

- setting a DC level at the output terminal for supplying a transmit signal of a prescribed level to the residential twisted pair wiring,

- comparing a controlled value representing the DC level with a predetermined threshold level, and

- controlling the output driver until the controlled value is equal to the threshold level.

The Examiner has failed to point out specifically wherein Cheng discloses the claimed steps.

However, it is respectfully submitted that the reference does not disclose:

- setting a DC level at the output terminal for supplying a transmit signal of a prescribed level to the residential twisted pair wiring,

- comparing a controlled value representing the DC level with a predetermined threshold level, and

- controlling the output driver until the controlled value is equal to the threshold level, as claim 1 recites.

It is noted that in accordance with the recent Guidelines for Determining Obviousness, the key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reasons why the claimed invention would have been obvious.

However, the Examiner has failed to articulate why the claimed drive control system and the above steps of claim 1 would have been obvious over Cheng.

Accordingly, the Examiner's conclusion of obviousness is not warranted.

In view of the foregoing, and in summary, claims 1-10 are considered to be in condition for allowance. Favorable reconsideration of this application, as amended, is respectfully requested.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

McDERMOTT WILL & EMERY LLP



Alexander V. Yampolsky
Registration No. 36,324

600 13th Street, N.W.
Washington, DC 20005-3096
Phone: 202.756.8000 AVY:apr
Facsimile: 202.756.8087
Date: January 9, 2008

**Please recognize our Customer No. 20277
as our correspondence address.**